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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DERRICK HOWARD, (Individual
Capacity),

Plaintiff,

and

DERRICK HOWARD, As Assignee of
Dissolved BIS Investments,
Limited Liability Company,

Plaintiff,

v.

Case No: _____

DAVID JAY BERNSTEIN, Individual
and Official Capacity)
Serve At: 660 E. Hillsboro Blvd.)
Suite # 106
Deerfield Beach, FL 33441

and

JAMES Murphy, (Individual and
Official Capacity)
Serve At: 660 E. Hillsboro Blvd.)
Suite #106
Deerfield Beach, FL 33441

PERRY ORLANDO, (Individual and
Official Capacity)
Serve At: 660 E. Hillsboro Blvd.)
Suite #106
Deerfield Beach, FL 33441

1
2 DAVID JAY BERNSTEIN, P.A.
3 Serve At: 660 E. Hillsboro Blvd.)
4 Suite # 106)
5 Deerfield Beach, FL 33441)

6 and)

7 BERSTEIN & WEINTRAUB)
8 Serve At: 660 E. Hillsboro Blvd.)
9 Suite # 106)
10 Deerfield Beach, FL 33441)

11 and)

12 FEDERAL LAW CENTER)
13 Serve At: 660 E. Hillsoboro Blvd.)
14 Suite #106)
15 Deerfield Beach, FL 33441)
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3 COMPLAINT WITH JURY DEMAND

4 Comes Now Derrick Howard, As Assignee of Dissolved BIS
5 Investments, Limited Liability Company, ("hereafter Assignee/
6 BIS") pro se and Derrick Howard in his Individual Capacity
7 pro se and respectfully files this Complaint and request a
8 jury trial on all of his causes of action raised herein.

9 JURISDICTION and VENUE

10 1.) Jurisdiction in this matter is founded on 28 U.S.C.
11 § 1332 Diversity of Citizenship, in that the Plaintiff and
12 Defendants are "citizens of different states" pursuant to 28
13 U.S.C. § 1332(a)(1). The Plaintiff Derrick Howard, Assignee
14 of Dissolved BIS Investments, Limited Liability Company is
15 and was a Limited Liability Company, registered, and with its
16 principal place of business in the State of Missouri. 28 U.S.C.
17 § 1332(c)(1) provides, in pertinent part, that "a corporation
18 shall be deemed to be a citizen of any State where it has its
19 principal place of business..."

20 Derrick Howard is an individual and the Registered Agent
21 of BIS Investments, LLC and the Assignee of Interest. Who prior
22 to filing this action was domiciled in the State of Missouri.
23 Therefore for purposes of this cause of action shall be deemed
24 a citizen of the State of Missouri.

25 James Murphy is an individual who is domiciled in the
26 State of Florida. Therefore for purposes of this cause of action
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2 James Murphy shall be deemed to be a citizen of the State of
3 Florida.

4 Perry Orlando is an individual who is domiciled in the
5 State of Florida. Therefore for purposes of this cause of action
6 Perry Orlando shall be deemed to be a citizen of the State
7 of Florida.

8 David Jay Bernstein is an individual who is domiciled
9 in the State of Florida. David Jay Bernstein also is an Attorney
10 who is licensed to practice law in the State of Florida and
11 a member of the Florida bar association. Therefore for purposes
12 of this cause of action he shall be deemed to be a citizen
13 of the State of Florida.

14 Bernstein & Associates, P.A. is and/or was a law firm
15 incorporated and domiciled in the State of Florida. Which David
16 Jay Bernstein acted in his individual and official capacity
17 as the authorized agent and/or managing partner. Therefore,
18 for purposes of this cause of action shall be deemed to be
19 a citizen of the State of Florida. As it maintained its
20 principal place of business in the State of Florida.

21 Bernstein & Weintraub is a law firm incorporated in the
22 State of Florida. Who's principal place of business is or was
23 located in the State of Florida. Therefore, for purposes of
24 this cause of action shall be deemed to be a citizen of the
25 State of Florida.

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2 Federal Legal Center is a law firm incorporated in the
3 State of Florida. Which maintained it's principal place of
4 business in the State of Florida and was incorporated under
5 the laws of the State of Florida. Therefore, for purposes of
6 this cause of action shall be deemed to be a citizen of the
7 State of Florida.

8 VENUE

9 The proper Venue is the Eastern District of Missouri pursuant
10 to 28 U.S.C. § 1391(b)(1) " insomuch as a substantial part
11 of the events or ommissions giving rise to the claim occurred..."
12 in the United States District Court Eastern District.

13 STANDING

14 Derrick Howard has standing based on Missouri law As
15 the Assignee of Dissolved BIS Investments, Limited Liability
16 Company. BIS Investments, LLC has assigned all of its interests
17 and rights, including the claims in this lawsuit to Derrick
18 Howard. See: Mo. Rev. Stat. § 351.476

19 Missouri law does, however allow a dissolved corporation
20 to assign its claims to a third-party. See: Smith v. Taylor-
21 Morley, Inc., 929 S.W. 2d 918 (Mo. Ct. App. 1996)(upholding
22 dissolved corporation's written assignment of rights to a purchase
23 contract). The assignee may sue to recover damages for the
24 dissolved corporation's claims Id. (holding assignee of dissolved
25 corporation's rights under a purchase contract could sue for
26 injuries to dissolved corporation for breach of the purchase
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2 contract). Here, Plaintiff Derrick Howard is the assignee of
3 of interest and all rights previously held by BIS Investments,
4 LLC. including the claims in this lawsuit. Therefore, Plaintiff
5 Derrick Howard, As Assignee of Dissolved BIS Investments, LLC,
6 has sufficiently plead and established he has standing under
7 Missouri law. Which is the law that governs this diversity
8 cause of action.

9 Plaintiff Derrick Howard in his individual capacity and
10 as Derrick Howard, As Assignee of Dissolved BIS Investments,
11 Limited Liability Company. Has sufficiently plead that this
12 court has subject matter jurisdiction over this action. Pursuant
13 to 28 U.S.C. § 1322 Diversity of Citizenship in that the
14 Plaintiff and Defendants are "citizens of different states"
15 pursuant to 28 U.S.C. § 1332(a)(1). The amount of controversy
16 is in excess of \$75,000.00 thus satisfying 28 U.S.C. § 1332
17 and hereby invokes this courts subject matter jurisdiction.

18 Plaintiff Derrick Howard in his individual capacity and
19 as assignee has sufficiently plead that the proper venue for
20 this cause of action is the Eastern District of Missouri.

21 Plaintiff Derrick Howard in his individual capacity and
22 as assignee has sufficiently plead that he has standing. To
23 bring this action pursuant to Missouri law. Therefore this
24 Court has subject matter jurisdiction. This Court is the proper
25 venue in which to bring this cause of action. Plaintiff has
26 standing under Missouri law to bring this action.

PARTIES

2.) Plaintiff Derrick Howard, As Assignee of Dissolved BIS Investments, Limited Liability Company (hereafter "Assignee/ BIS") is and remains at all relevant times, a Limited Liability Company registered, and with its principal place of business, in the State of Missouri.

3.) Derrick Howard in his individual and official capacity is an individual previously domiciled in the State of Missouri. Therefore he is deemed to be a citizen of the State of Missouri for purposes of this cause of action.

4.) Defendant David Jay Bernstein in his individual and official capacity is and was at all relevant times an Attorney licensed to practice law in the State of Florida. Who's domiciled in the State of Florida. Therefore he is deemed to be a citizen of the State of Florida for purposes of this cause of action.

5.) James Murphy in his individual and official capacity is a paralegal and employee of Attorney David Jay Bernstein and David Jay Bernstein, P.A. and Bernstein & Weintraub, and Federal Law Center. Who is domiciled in the State of Florida. Therefore he is deemed to be a citizen of the State of Florida for purposes of this cause of action.

6.) Perry Orlando in his individual and official capacity is a paralegal and employee of David Jay Bernstein, and David Jay Bernstein, P.A., and Bernstein & Weintraub, and Federal Law Center. Who is domiciled in the State of Florida.

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2 Therefore he is deemed to be a citizen of the State of Florida
3 for purposes of this cause of action.

4 7.) David Jay Bernstein, P.A. is a corporation incorporated
5 in the State of Florida who principal place of business is in
6 the State of Florida. Therefore for purposes of this cause of
7 action is deemed a citizen of the State of Florida.

8 8.) Bernstein & Weintraub is a corporation incorporated
9 in the State of Florida. Who maintained its principal place
10 of business in the State of Florida. Therefore for purposes
11 of this cause of action is deemed to be a citizen of the State
12 of Florida.

13 9.) Federal Law Center is a corporation incorporated in
14 the State of Florida. Who maintained its principal place of
15 business in the State of Florida. Therefore for purposes of
16 this cause of action is deemed to be a citizen of the state
17 of Florida.

18 STATEMENT OF FACTUAL ALLEGATIONS

19 10.) Derrick Howard acting pro se in his individual capacity
20 and as Assignee of Dissolved BIS Investments, Limited Liability
21 Company filed a complaint for damages against Bank of America,
22 NA and several other defendants. That complaint was filed in
23 the United States District Court West Virginia Southern District.
24 That complaint was assigned Case No: 2:10-CV-01354.

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2 The December 3, 2010 action filed by Plaintiff Derrick
3 Howard was an action against Bank of America, ("BOA") and numerous
4 defendants, asserting claims that BIS funds were misappropriated
5 from BIS bank accounts held at BOA. BIS Investments, L.L.C.,
6 is a Limited Liability Company. Derrick Howard was at all relevant
7 times the sole shareholder, manager, and agent. Additionally
8 Derrick Howard was at all relevant times the sole source of
9 the operating capital that initially funded any and all BIS
10 ventures. BIS maintained four (4) different accounts with BOA,
11 ending in 3425, 3774, 2646 and 9879. BIS account 2646 contained
12 approximately \$240,000.00, which Kimberly Haskins fraudulently
13 and unlawfully removed on January 4, 2005 in two separate
14 transaction. These fraudulent and unauthorized withdrawals
15 were witnessed and authorized by BOA Manager Kassandra Hodge.
16 Haskins then deposited the money into a Commerce Bank Account
17 Registered under the name "Derf Inc.," BOA Bank Manager Bryan
18 Evans became aware of the transactions, and contacted Haskins
19 and Commerce Bank. Commerce Bank and BOA Bank Manager Bryan
20 Evans mutually agreed that the funds would be deposited into
21 the Derf Inc., account and a hold would be placed on those
22 funds in the Derf Inc., account. The funds would then be returned
23 to BOA and deposited into BIS Account 2646 held at BOA. However,
24 when the funds were returned from Commerce Bank. BOA erroneously
25 deposited the funds into account 9879 which Kimberly Haskins
26 had access and maintained complete control of account 9879.

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2 The 9879 account should have been closed by BOA was not closed
3 by BOA as instructed and agreed upon. BIS via Derrick Howard
4 and attorneys for BIS repeatedly informed BOA that Kimberly
5 Haskins was not authorized to transact business on any of
6 BIS accounts. Which prompted Plaintiff to file numerous lawsuits
7 in regards to the above-mentioned fraudulent and unauthorized
8 withdrawals of funds belonging to BIS from BOA.

9 Complaint 4:10-CV-02365-CDP was the third suit filed by
10 BIS and Derrick Howard regarding the above-mentioned funds
11 and the fraudulent and unauthorized withdrawals of BIS funds
12 from BOA. On March 19, 2009 BIS and Howard filed suit in Missouri
13 State Court alleging breach of fiduciary duty against BOA and
14 imberly Haskins. The claims against BOA were dismissed on
15 May 24, 2010 and the entire case was dismissed on November
16 18, 2010. On December 3, 2010, BIS and Howard re-filed suit
17 invoking the Missouri Saving Clause § 516.230 that suit was
18 filed in the United States District Court for the Southern
19 District of West Virgina, Case No: 2:10-CV-01354. That suit
20 was titled BIS Investments, L.L.C., v. Bank of America, NA,
21 Nine other defendants alleging thirteen (13) different counts.
22 (Case No: 2:10-CV-01354). That case was subsequently transferred
23 to the United States District Court for the Eastern District
24 of Missouri Eastern Division. That case was assigned Case No:
25 4:10-CV-02365-CDP. See: Attached Dkt. for complete history
26 hereby attached as Exhibit "A"

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2 11.) On or about 12/10/201 the United States District Court
3 W. Virginia Southern District (DK # 4) entered an order directing
4 Case No: 2:10-CV-01354 be transferred to the United States Dist.
5 Court for the Eastern District of Missouri.

6 12.) On or about 12/21/2010 a complaint letter was created
7 and a United States District Court for the Eastern District
8 of Missouri case number was assigned to the cause of action
9 (4:10-CV-02365-CDP).

10 13.) On or about 1/19/2011 (DK #7) an entry of appearance
11 was filed by Christopher M. Hohn as counsel of record for Bank
12 of America, N.A., ("BOA") and Elouise Goodum.

13 14.) On or about 1/24/2011 the United States District Court
14 for the Eastern District of Missouri Honorable Judge Catherine
15 D. Perry Struck BIS Investments, L.L.C., as a party-plaintiff.
16 See: Docket Entry # 11)

17 14.) On or about 2/07/2011 Dk# 14 Motion to Dismiss for
18 Lack of Jurisdiction was filed by BOA and Goodum. (Guletz, Matthew)
19 Counsel of record for the defendant's.

20 16.) On or about 2/25/2011 Dk # 22 Entry of Appearance
21 (Sugg, Deron) on behalf of Santos Albright and Stephenson Elec.

22 17.) On or about 2/25/11 DK# 23 Motion to Dismiss for Lack
23 of Jurisdiction filed by Santos Albright and Stephenson Elec.
24 by counsel of record (Sugg, Deron). See: Exhibit "A" Dkt Case #
25 4:10-cv-02365-CDP

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2 18.) On or about 2/28/2011 Motion for Leave to Amend pursuant
3 to Fed. R. Civ. P. 15(a)(1) filed by Plaintiff a pro se filing
4 entered on Docket Sheet at 26.

5 19.) On or about 2/28/2011 (DK # 27) Plaintiff filed a
6 pro se Motion for Extension of Time to file a response to the
7 defendants motions to dismiss for lack of jurisdiction.

8 20.) On or about 4/07/2011 (DK# 54) Motion for Leave to
9 Appear Pro Hac Vice was filed by David Jay Bernstein.

10 21.) On or about 4/07/2011 Motion for Extension of Time
11 to File Response/Reply or any further pleading; (DK# 55) was
12 filed by David Jay Bernstein. Proposed extension date to file
13 response was May 22, 2011.

14 22.) On April 8, 2011 Receipt 4644020929 in the amount
15 of \$100.00 for Pro Hac Vice on behalf of David Jay Bernstein
16 was entered on 4/09/2011).

17 23.) On April 12, 2011 (DK# 56) Motion for Leave to Appear
18 Pro Hac Vice by David Jay Bernstein was granted.

19 24.) On June 2, 2011 Honorable Judge Catherine D. Perry
20 entered an order to Show Cause that stated: (It is hereby ordered
21 that, no later than Friday, June 10, 2011, plaintiff, through
22 counsel, must show cause in writing why I should not dismiss
23 his case for the reasons stated in defendants motions to dismiss.
24 (Show Cause Response due by June 10, 2011).

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2 25.) On June 10, 2011 (DK# 59) David Jay Bernstein filed
3 an erroneous and negligent and a deficient Motion to Dismiss
4 Complaint. Which was clearly Legal Malpractice.

5 26.) On June 15, 2011 (DK#60) BOA counsel of record filed
6 a Memorandum in Opposition re 59 Motion to Dismiss filed by
7 David Jay Bernstein.

8 27.) On June 28, 2011 (DK# 61) the Court entered a Memorandum
9 and Order: It is Hereby Ordered that plaintiff Derrick Howard's
10 motion for leave to dismiss is construed as a notice of voluntary
11 dismissal under Rule 41(a)(1), and this case is dismissed without
12 prejudice pursuant to notice. Signed by Honorable Catherine
13 D. Perry on 6/28/2011. (KMS)(Entered: 06/28/2011)

14 CAUSE OF ACTION

15 The Plaintiff Alleges And Charges As Follows:

16 1.) Breach of Fiduciary Duty

17 A Fiduciary relationship existed between Plaintiff Derrick
18 Howard in his individual capacity and as Assignee of Dissolved
19 BIS Investments, L.L.C., as BIS Investments, L.L.C., has assigned
20 its interest to Derrick Howard. David Jay Bernstein in his individual
21 and official capacity owed a Fiduciary Duty to BIS. James Murphy
22 in his individual and official capacity owed a Fiduciary Duty
23 to BIS and Derrick Howard. Perry Orlando in his individual
24 and official capacity owed a Fiduciary Duty to BIS and Derrick
25 Howard. David Jay Bernstein, P.A. owed a Fiduciary Duty to BIS
26 and Derrick Howard. Bernstein & Weintraub owed a Fiduciary Duty
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2 to BIS and Derrick Howard. Federal Law Center owed a Fiduciary
3 Duty to BIS and Derrick Howard and James Murphy owed a Fiduciary
4 Duty to Derrick Howard.

5 The above-mentioned defendants breached their Fiduciary Duty
6 owed to Plaintiff's Derrick Howard and Derrick Howard, As Assignee
7 of Dissolved BIS Investments. Limited Liability Company. The
8 defendants failed to properly protect the Plaintiff's legal
9 interest. When they provided negligent and ineffective and
10 deficient legal research regarding Missouri law. Specifically
11 Missouri Statute of Limitations and the Missouri Saving Clause
12 § 516.230. Defendants failed to exercise the degree of skill
13 and diligence ordinarily used under the same or similar
14 circumstances by members of the legal profession. "Thiel v.
15 Miller, 164 S.W. 3d 76, 82, (Mo. App. 2005); See: Steward
16 v. Goetz, 945 S.W. 2d 520, 531 (Mo. App. 1997).

17 The above-mentioned defendant's further breached their
18 Fiduciary Duties owed to Plaintiff's when they negligently
19 researched and filed the Motion for Voluntary Dismissal Without
20 Prejudice in Case No: 4:10-CV-02365-CDP. Which ultimately rendered
21 Plaintiff's claims in Case No: 4:12-CV-00195 untimely and outside
22 the Missouri 5 year Statute of Limitations. As Plaintiff had
23 already invoked the Missouri Saving Clause § 516-230. When
24 Plaintiff's filed the United States District Court for the
25 Southern District of W. Virginia suit bearing Case No: 2:10-
26 CV-01354. See; Exhibit "B" Motion for Voluntary Dismissal

1
2 to the Courts June 2, 2011 Show Cause Order. That response
3 was due no later than Friday, June 10, 2011. In which the court
4 clearly stated in that order " plaintiff, through counsel,
5 must show casue in writing why I should not dismiss his case
6 for the reasons stated in defendants motion to dismiss." The
7 defendant's failed to properly respond. Defendant's filed a
8 motion to voluntarily dismiss without prejudice. Negligently
9 believing that they could re-file the lawsuit by invoking the
10 Missouri Savings Clause § 516.230 which Plaintiff had already
11 invoked and could not invoke a second time. Plaintiff made
12 this absolutely clear to the defendants. However, defendant's
13 negligently filed it's motion to dismiss without consulting
14 with plaintiff. After repeated instructions from plaintiff
15 not to dismiss his lawsuit and refile it. Therefore plaintiff's
16 injuries was proximately caused by defendant's failure. See:
17 Smith v. Dewitt & Assocs., Inc., 279 S.W. 3d 220, 224 (Mo.
18 Ct. App. 2009) "a duty of care arises out of circumstances
19 in which there is a foreseeable likelihood that particular
20 acts or omissions will cause harm or injury, " AND "[t]he scope
21 of that duty is measured by whether a reasonably prudent person
22 would have anticipated danger and provided against it." Id.
23 (Citations Omitted) As a direct result of the duty owed to
24 Plaintiff and Defendant's failure to protect Plaintiff. Defendants
25 David Jay Bernstein (Individually and Officially) and James
26 Murphy, Perry Orlando had a legal duty to protect Plaintiff
27 See: Exhibits "A", "B", and "C" (Show Cause Order) 4:10-cv-02365 CDP

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2 from injury but failed to do so. David Jay Bernstein failed
3 to properly supervise and train James Murphy and Perry Orlando.
4 All of the defendant's acted negligently and failed to exercise
5 the degree of skill and diligence used under the same or similar
6 circumstances by members of the legal profession. Which resulted
7 in the negligence of each and every defendant named in this
8 complaint. That negligence caused Plaintiff to be injured and
9 caused plaintiff to sustain monetary damages that are not yet
10 fully ascertained but are reasonably believed to be in excess
11 of \$240,000.00 dollars. But for defendant's negligent conduct
12 the plaintiff's cause of action in 4:10-CV-02356-CDP and 4:12-
13 CV-00195-CDP would have been successful in the defense of its
14 underlying claim(s) in both BIS v. BOA Case No: 4:10-CV-02365-
15 CDP and 4:12-CV-00195-CDP. See: Exhibits "A", "B", "C"

16 3.) Legal Malpractice

17 The Plaintiff and Defendant's had an attorney-client
18 relationship which existed in both Case No's: 4:10-CV-02365-CDP
19 and 4:12-CV-00195-CDP. Defendant's acted negligently and breached
20 the duties and legal obligations owed to Plaintiff. Specifically
21 when the defendant's in Case No. 4:10-CV-02365-CDP failed to
22 properly respond to the June 2, 2011 Show Cause Order. In Case
23 No: 4:10-CV-02365 CDP defendant's filed a motion to voluntarily
24 dismiss without prejudice. When they should have filed a motion
25 seeking leave of the court to amend the petition pursuant to
26 Fed. R. Civ. P. 15(a)(2). See: Dkt. # 59 Exhibit "A"

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2 Defendant's acts and or omissions in responding to the
3 June 2, 2011 Show Cause Order in Case No: 4:10-CV-0235-CDP
4 was clearly the proximate cause of Plaintiff's injuries. The
5 defendant's erroneously and negligently and in breach of of
6 its legal obligations and duties caused plaintiff injuries.
7 When they filed the motion for voluntary dismissal instead
8 of seeking leave to amend pursuant to Fed. R. Civ. P. 15(a)(2).

9 Had the defendant's not filed the motion for voluntary
10 dismissal without prejudice in Case No: 4:10-Cv-02365-CDP on
11 June 10, 2011. Plaintiff's would have been successful in the
12 defense and prosecuting of its underlying claims in 4:12-CV-00195.

13 Defendant's acted negligently and failed to exercise the
14 degree of skill and diligence ordinarily used under the same
15 or similar circumstances by members of the legal profession.

16 Plaintiff vehemently urged and instructed defendant's to
17 move the court to grant leave to amend his inartfully plead
18 pro se complaint pursuant to Fed. R. Civ. P. 15(a)(2). Defendant's
19 continued to ignore plaintiff's constant and persistent pleas
20 and instructions not to file the motion for voluntary dismissal
21 without prejudice. Plaintiff repeatedly informed the defendant's
22 that he had already invoked the Missouri Saving Clause, (§
23 516.230) which provides that "if any action shall have been
24 commenced within the times respectively prescribed... and the
25 Plaintiff suffer a nonsuit... such Plaintiff may commence a
26 new action from time to time, within one year after such nonsuit
27 suffered. " § Mo. Rev. Stat. § 516.230.

1
2 To establish a claim of negligence under Missouri law, a
3 plaintiff must show, among other things, the existence of a legal
4 duty and a breach by the defendant of that duty. Clearly the
5 docket sheet in 4:10-cv-02365-CDP and 4:10-cv-00195 has clearly
6 established and shown the existence of a legal duty owed to
7 Plaintiff by the defendant's. See: Exhibit's "A" and "B", "C",
8 "D", "E", "F", "G", "H", "I", "J"

9 Defendant's breached the legal duty owed to Plaintiff when
10 they filed the motion for voluntary dismissal without prejudice
11 instead of seeking leave to amend pursuant to Fed. R. Civ. P.
12 15(a)(2). See; Exhibit "B" Copy of Motion for Voluntary Dismissal.

13 Missouri law also provides that in cases of professional
14 negligence, the specific duty is defined by the profession,
15 itself; thus, an expert witness is generally necessary to tell
16 the jury what the defendant should or should not have done.
17 Under the particular circumstances of the case whether the doing
18 of that act or the failure to do that act violated the standards
19 of care of the profession (and, thus constituted negligence).

20 The negligent act, therefore, is the act or failure to act,
21 the standards for which must be presented by an expert. Expert
22 testimony also is required in actions alleging legal malpractice.

23 To establish that an attorney was negligent, a plaintiff must
24 show that he failed to exercise that degree of skill and diligence
25 ordinarily used under the same or similar circumstances by members
26 of the legal profession. There are exceptions to this rule.

27 Expert testimony is not required if the negligence in question
28

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2 is clear and palpable to a jury of layman. A claim of legal
3 malpractice would not require expert testimony if, for example,
4 a lawyer failed to file a claim within the statute of limitations
5 or allowed some other time limit to pass. See: Exhibit "G"

6 Plaintiff has sufficiently plead his claims for legal malpractice
7 in this petition. It is clear that a jury of layman could and
8 would determine that defendant's negligence and fraudulent
9 misrepresentaion regarding the Missouri Savings Clause § 516.230
10 constitutes legal malpractice as defined under Missouri law.

11 Plaintiff has sufficiently plead his claims for breach
12 of fiduciary duty under Missouri law. A jury of layman could
13 and would determine that defendant's did in fact breach the
14 legal duties owed to Plaintiff under Missouri law.

15 Plaintiff has sufficiently plead his claims for negligence
16 under Missouri law. A jury of layman could and would determine
17 that defendant's in fact were negligent in its duty to protect
18 Plaintiff form injury. See: Exhibit "G" Memorandum and Order

19 Plaintiff has sufficiently plead his claims for fraudulent
20 misrepresentation under Missouri law. A jury of layman could
21 and would determine that defendant's did in fact fraudulently
22 misrepresented the Missouri Savings Clause § 516.230. Specifically
23 the numer of times it could be invoked after a non-suit.

24 Plaintiff has sufficiently plead that defendant's are clearly
25 liable for monetary damages that Plaintiff sustained as a direct
26 result of defendant's negligence and legal malpractice. Which
27 clearly and consequently and proximately caused injury.

1
2 Plaintiff informed the defendant's numerous times that
3 a Plaintiff may recieve the benefit of the saving clause only
4 once. Plaintiff even provided defendants with relevant and
5 binding Missouri case law Heintz v. Swimmer , 922 S.W. 2d 772,
6 776 (Mo. Ct. App. 1996). Defendant's ignored Plaintiff's constant
7 and persistent pleas not to dismiss his action. Stating he had
8 already invoked the Missouri Saving Clause § 516.230. Therefore,
9 dismissing his cause of action would render his claims time
10 barred by the Missouri five (5) year Statute of Limitations.
11 Plaintiff's pleas fell upon deaf ears as defendant's moved
12 forward with their decision to file the motion for voluntary
13 dismissal without prejudice. ~~Acting in a negligent manner and in~~
14 ~~total disregard for establised Missouri case law. Which is clearly~~
15 a deliberate act of legal malpractice on behalf of each and
16 every defendant named in this cause of action. Defendant's
17 did not consult with the Plaintiff prior to filing it's motion
18 for voluntary dismissal without prejudice. Defendant's failed
19 to exercise the degree of skill and diligence ordinarily used
20 under the same or similar circumstances by members of the legal
21 profession. See: Exhibits "A", "B" Motion for Voluntary Dismissal

22 4.) Fraudulent Misrepresentation

23 A claim for fraudulent Misrepresentation Under Missouri
24 law requires proof of the following elements: "(1) a representation;
25 (2) its falsity; (3) its materiality; (4) the speaker's knowledge
26 of its falsity or ignorance of its truth; (5) the speaker's
27 intent that it should be acted on by the person in the manner
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2 reasonably contemplated; (6) the hearer's ignorance of the falsity
3 of the representation; (7) the hearer's reliance on the
4 representation being true; (8) the hearer's right to rely thereon;
5 and (9) the hearer's consequent and promimately caused injury."

6 Defendant's made a representation to Plaintiff that he
7 could in fact invoke the Missouri Savings Clause § 516.230 more
8 than once if he suffered a non-suit. That representation turned
9 out to false and clearly not supported by Missouri case law.
10 That false representation was clearly relevant and material
11 as to the Missouri Statute of Limitations regarding Plaintiff's
12 claims. The speaker being the defendant's knowledge of the falsity
13 or ignorance of its truth. The misrepresentation that Plaintiff could
14 invoke the Missouri Savings Clause § 516.230 and re-file his
15 cause of action after filing the motion for voluntary dismissal
16 without prejudice. The defendant's, (speaker) intended that
17 this misrepresentation should be and would be acted on by the
18 Plaintiff in the manner reasonably contemplated. Plaintiff being
19 the hearer of this misrepresentaion and a pro se litigant was
20 ignorant of the falsity of the defendant's misrepresentation
21 that he could in fact invoke the Missouri's Saving Clause §
22 516.230 more than once if he suffered a non-suit. Which would
23 have enabled Plaintiff to re-file his cause of action. Plaintiff
24 being the hearer and defendant's being trained legal professionals
25 clearly relied on the representation as being true. Being that
26 Plaintiff was a layman with no formal training in the law.

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2 Plaintiff being the hearer of this fraudulent misrepresentation
3 that he could in fact invoke the Missouri Savings Clause § 516.230
4 more than once if he suffered a non-suit. The Plaintiff was
5 clearly within his right as a client of the defendant's to rely
6 on the fraudulent misrepresentation made by the defendnat's.
7 Plaintiff being the hearer of this fraudulent misrepresentation
8 has consequently and proxitedly sustained monetary damages as
9 a direct result of the defendant's fruadulent misrepresentation.
10 Thefore, the hearer's consequently and proximately caused injury
11 was and remains the defendant's fraudulent misrepresentaion
12 that Plaintiff could in fact invoke the Missouri Savings Clause
13 § 516.230 and refile his cause of action. However, that was
14 clearly not the case as the court dismissed the refiled complaint
15 as being time barred by Missouri Statute of Limitations. Which
16 is (5) years from the date Plaintiff could have reasonably
17 discovered and or ascertained his dmamges and rght to sue to
18 recover those dmamges. See: Exhibit "A" Dkt Sheet 4:10-cv-02365-CDP
19 Exhibit "B" Motion for Voluntary Dismissal Without Prejudice,
20 Exhibit "C" Order to Show Cause 4:10-cv-02365-CDP, Exhibit "D"
21 Order and Memorandum (Granting Motion for Voluntary Dismissal),
22 Exhibit "E" Refiled Complaint Case No: 4:12-cv-00195-CDP,
23 Exhibit "F" Dkt Sheet 4:12-cv-00195-CDP, Exhibit "G" Memorandum
24 and Order 4:12-cv-00195-CDP (Dismissal), Exhibit "H" Order of
25 Dismissal 4:12-cv-00195-CDP, Exhibit "I" U.S. Court of Appeals for
26 the Eighth Circuit No. 12-2452 Opinion BIS Investments, LLC, v.
27 Bank of America, Exhibit "J" U.S. Court of Appeals for the Eighth
28 Circuit Judgment.

1 CONCLUSION / REQUEST FOR DAMAGES

2 WHEREFORE, Plaintiff's Derrick Howard in his Individual
3 Capacity and Official Capacity Derrick Howard, As Assignee of
4 Dissolved BIS Investments, Limited Liability Company, prays
5 this Honorable Court find in favor of the Plaintiff's in each
6 and every count contained in this complaint / cause of action.
7 Specifically in each of the above counts, in the individual
8 and official capacities of each and every defendant named in
9 this complaint. Holding the defendant's individually and or
10 collectively and in their official capacities liable for an
11 award of compensatory and punitive damages and interest to
12 the Plaintiff's. Damages which are not yet fully ascertained
13 but are reasonably believed to be in excess of Two Hundred
14 and Sixty Thousand Dollars, (\$260,000.00). As well as interest
15 to be calculated by this Honorable Court as reasonable compensation.
16 Further moving this Honorable Court to enter a ruling that
17 the above acts and or omissions were the cause of Plaintiff's
18 damages and were done intentionally, and fraudulently, and
19 with gross indifference to the rights of the Plaintiff's. As
20 well as a breach of defendant's legal duties and obligations
21 owed to the Plaintiff's.

22 Respectfully Submitted, pro se

23 Derrick Howard

24 Derrick Howard, Individually and
25 Derrick Howard, As Assignee of
26 Dissolved BIS Investments, Limited
27 Liability Company.

28 C/O: Derrick Howard #24997-044
 United States Penitentiary Coleman II
 P.O. Box 1034
 Coleman, FL 33521

CERTIFICATE OF SERVICE

I, Derrick Howard, pro se, do hereby certify under the penalty of perjury (28 USC § 1746) that I have served a true and correct copy of the following document(s):

COMPLAINT WITH JURY DEMAND

which, pursuant to Houston v. Lack, 487 U.S. 266, 101 L.Ed. 2d 245, 108 S.Ct. 2379 (1988), is deemed filed at the time it was delivered to prison authorities for forwarding to the court and service upon parties to litigation and /or their attorney(s) or record.

I have place the material referenced above in a properly sealed envelope with first-class postage (stamps) affixed and I addressed it to:

United States District Court
Eastern District of Missouri
Eastern Division
111 S. 10th Street
St. Louis, Missouri 63102

and deposited said envelope in the United States Postal Service
via the legal mailbox here at the United States Penitentiary-
on this 5th day of April, 2017

-25-

FCC Coleman, Florida Sumter County
Subscribed and sworn before me this

5th day of April, 2017

D. Connelly, Sr. COW

Case Manager
Authorized by the Act of July 7, 1955,
as amended, to administer oaths (18USC 4004.)